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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93-349

In the Matter of	)	
	)	
Policies and Rules Implementing	)	CC Docket No. 93-22
the Telephone Disclosure and Dispute	)	RM-7990
Resolution Act	)	

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REPORT AND ORDER

Adopted: July 15, 1993 Released: August 13, 1993

By the Commission:

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I. INTRODUCTION

1. With this Report and Order, the Commission adopts new regulations governing the role of common carriers in the provision of interstate pay-per-call services. By this action, we are replacing our existing pay-per-call rules with new rules[1] which have been drafted to meet the statutory requirements of the Telephone Disclosure and Dispute Resolution Act (TDDRA).[2]

II. BACKGROUND

2. Pay-per-call services (also know as "audiotext" or "900" services) provide telephone users a variety of recorded and interactive information programs for which they are charged rates different from, and usually higher than, the normal transmission rates for ordinary telephone calls.[3] In 1991, the Commission established pay-per-call regulations aimed at protecting telephone subscribers from abusive practices which had been associated with the provision of such services.[4]

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1 Our current rules are found at 47 C.F.R. §§ 64.709-64.716. The new rules are set forth in Appendix B and will be codified at 47 C.F.R. §§ 64.1501-1515.

2 Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992.

3 The history of pay-per-call services is discussed in paragraphs 2-6 of the Notice of Proposed Rule Making and Notice of Inquiry that initiated this proceeding. Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, 8 FCC Rcd 2331 (1993) (NPRM/NOI).

4 Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 6166 (1991)(900 Services Order), recon., 8 FCC Rcd 2343 (1993)(900 Services Reconsideration Order).

3. On October 28, 1992, the TDDRA was signed into law. The statute provides for a regulatory system intended to both promote the legitimate development of pay-per-call services and shield consumers from fraudulent and deceptive practices. Under the TDDRA, this Commission and the Federal Trade Commission (FTC) are charged with adopting rules to implement the required obligations and constraints to be imposed on common carriers, information providers (IPs), and other entities involved in the provision of interstate pay-per-call services.[5]

4. On February 11, 1993, the Commission adopted the NPRM/NOI which proposed to amend existing pay-per-call regulations in response to the statutory mandate of the TDDRA. The proposed rules, which are described in detail in Section III, address various activities related to the handling of pay-per-call services by common carriers including designation of pay-per-call telephone numbers, blocking of 900 services, information disclosure, billing and collection, prohibition on disconnection of basic communications services, termination of unlawful services, forgiveness of charges and refunds, use of 800 numbers, and recovery of costs incurred by carriers through compliance with the TDDRA requirements. In response to the NPRM/NOI, 35 comments and 18 reply comments were filed by parties representing a range of different interests. Commenters include interexchange carriers (IXCs), local exchange carriers (LECs), IPs, state regulatory and law enforcement entities, and consumer interest groups.[6]

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5 Title I of the TDDRA adds a new section to the Communications Act providing an explicit statutory framework for this Commission's regulation of the provision of pay-per-call services through common carriers. 47 U.S.C. § 228. In addition, the Commission is directed to provide recommendations to Congress "with respect to the extension of [pay-per-call] regulations . . . to persons that provide, for a per-call charge, data services that are not pay-per-call services." 47 U.S.C. § 228(f)(3). Titles II and III require the FTC to adopt regulations regarding pay-per-call services. Title II primarily prescribes advertising and service standards applicable to pay-per-call programs. Under Title III, the FTC must regulate telephone-billed purchases with rules substantially similar to the provisions of the Truth in Lending Act and Fair Credit Billing Act, 15 U.S.C. § 1601 et seq.

6 Comments were due on April 19, 1993 and replies on May 4, 1993. A list of commenters, including the abbreviations we use herein, is contained in Appendix A. Late comments were filed by 900 America, Ameritech, and Pilgrim; late reply comments were filed by the Joint IPs and NAAG. In the interest of a complete record, the Commission accepts these filings. However, comments filed by American Telegram Corporation (ATC) seven weeks after the comment deadline and five weeks after the reply comment deadline have not been considered formally. We have, however, reviewed ATC's comments as a permissible ex parte presentation.

III. DISCUSSION

5. The following discussion presents our disposition of the NPRM/NOI proposals and issues raised independently by commenters.[7]

A. Definitions (Section 64.1501)

6. **Proposal**. The NPRM/NOI proposed to adopt a definition of pay-per-call services to conform with that set forth in the TDDRA.[8] Commenters were asked to discuss whether certain terms employed in the definition and crucial to the application of the statute's protective provisions should be defined by rule. For example, the TDDRA specifically categorizes as outside the definition of pay-per-call "any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service."[9] We tentatively concluded that within the context of the TDDRA, a presubscription arrangement should encompass only those agreements made by subscribers prior to initiation of a call.[10] Commenters were invited to discuss the validity and effects of that view and whether that standard or some different or more detailed definition should be incorporated in our rules.

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7 Proposed Section 64.1514, prohibiting common carriers from assigning a telephone number to a pay-per-call service that employs broadcast advertising which generates the audible tones necessary to complete a call to a pay-per-call service, is virtually identical to Section 64.716. No commenter addresses this provision, and we are adopting the rule as proposed.

8 47 U.S.C. § 228(i) reads "For purposes of this section --
(1) The term 'pay-per-call services' means any service --
(A) in which any person provides or purports to provide --
(i) audio information or audio entertainment produced or packaged by such person;
(ii) access to simultaneous voice conversation service; or
(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;
(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and
(C) which is accessed through use of 900 telephone number or other prefix or area code designated by the Commission . . . .
(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service."

9 47 U.S.C. § 228(i)(2).

10 NPRM/NOI, 8 FCC Rcd 2331 at n.5.

7. **Comments**. Parties generally accept without comment the statutory definition of pay-per-call service which we proposed to incorporate in our rules. However, some parties suggest that the definition be modified or amplified for purposes of clarity or to increase the reach of the protective provisions the Commission is adopting under the TDDRA. NYNEX urges the Commission to include information services billed to a subscriber on a collect basis within the pay-per-call definition in the event an outright ban on collect information calls is not adopted.[11] CA suggests that information services offered through international calls employing an area code numbering system similarly be categorized as pay-per-call.[12] Pilgrim states that the interplay between the proposed restriction of all pay-per-call service to telephone numbers beginning with a 900 access code and inclusion of that 900 code requirement within the pay-per-call definition itself makes the rules both confusing and difficult to apply. Pilgrim suggests that the definition of pay-per-call be "any service in which there are charges which are levied which are greater than or in addition to the common carrier transport charge tariffed at the Commission."[13]

8. Commenters addressed the specific exemptions to the pay-per-call definition specified in Section 228(i)(2) and included verbatim in our proposed rules. Cox seeks clarification that the exemption for "directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate" only covers "true" directory services.[14] Other parties seek clarification with respect to the exclusion created for services offered through a "presubscription or comparable arrangement," stating that the term "presubscription" should be defined by rule. Although there is no consensus as to precisely what that definition should be, most parties support the inclusion of more detailed standards than those presented in the NPRM/NOI.[15] Most parties agree that presubscription should not encompass any actions taken during the course of a call to a pay-per-call service.[16] Some parties support adoption of

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11 Comments of NYNEX at 2. This issue is addressed in ¶ 39, infra.

12 Comments of CA at 9-10.

13 Reply Comments of Pilgrim at 7.

14 Comments of Cox at 7-8 (carriers would be afforded an undue preference if their provision of competitive information services are exempt from the requirements of the TDDRA simply because they are offered through a directory assistance system).

15 Comments of AM at 3-4; Comments of AT&T at 3-4; Comments of NACAA at 3; Comments of NAIS at 3-5; Comments of Phone Programs at 6-7; Comments of U S West at 10-11 (specific definition is especially important because within the general context of federal telecommunications "presubscription" has been given a particular meaning not applicable to the pay-per-call).

16 Comments of AM at 4 n.1; Comments of AT&T at 3; Comments of NACAA at 3; Comments of NAIS at 3; Comments of Phone Programs at 6; Comments of U S West at 11; Reply Comments of Sprint at 5. But see Comments of Prodigy

the pay-per-call definition proposed by the FTC for inclusion in its pay-per-call rules[17] while others propose their own definition or embrace an alternate proposal by NAIS.[18] Although generally opposed by other commenters, NACAA would require that presubscription agreements be executed in writing.[19] Several parties assert that any definition of presubscription or comparable arrangements should explicitly encompass pay-per-call transactions that are accomplished through the use of credit or charge cards.[20]

9. Decision. The proposed definition of pay-per-call services is being adopted unchanged.[21] Congress has incorporated that specific definition into the Communications Act. This action reflects a consideration and balancing of interests by Congress that we will not disturb.[22]

10. The specific exemption of certain types of service and transactions from the reach of pay-per-call regulation, accomplished through Section 228(i)(2), creates incentives for IPs to tailor their information services to fall within these exemptions.[23] Thus, clear standards interpreting this

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at 2-4 (Absolute prohibition against presubscription during course of call to pay-per-call service could hamper advances and "pro-consumer developments" in the information services industry); Reply Comments of Joint IPs at 3.

17 Comments of AM at 3-4; Reply Comments of AT&T at 2-5; Comments of U S West at 11.

18 Comments of Phone Programs at 6-7.

19 Comments of NACAA at 3. But see Comments of NAIS at 3; Reply Comments of MCI at 1 (also opposes proposed requirement for personal identification number).

20 Comments of AM at 2, 5-7; Comments of IIA at 4-8; Comments of MCI at 2-3; Comments of Tele-Publishing at 3. In addition, some commenters urge that telephone calling cards be explicitly recognized as credit or charge cards. Comments of AM at 5-7; Comments of BellSouth at 3; Comments of Joint IPs at 5; Comments of Pilgrim at 7.

21 We note that international calls used to link customers to IPs overseas do not fall within the statutory definition of pay-per-call services because they are provided pursuant to tariff as communications services.

22 Nonetheless, we agree with Pilgrim that the interplay between proposed Sections 64.1501 and 64.1506 is both confusing and creates an opportunity for IPs to structure their programs to evade the protective provisions of the TDDRA. This can be remedied, however, by simply modifying the language of Section 64.1506, an action we now take. See n.80, infra.

23 At the outset, we specify, as Cox requests, that a common carrier who is also functioning as an IP cannot shield its information services from pay-per-call regulation by offering them through a directory services number.

provision are necessary to ensure that consumers enjoy the protections that Congress intended to confer through the TDDRA, and that IPs and carriers properly apply the requirements of our rules.

11. We conclude that the term "presubscription or comparable arrangement" should be explicitly defined by rule, given the importance of this term in determining the scope of both our own regulations and those of the FTC. The definition we are adopting herein establishes presubscription as a contractual agreement in which (1) the service provider clearly and conspicuously informs a consumer of the terms and conditions under which the service is offered, including the rates to be charged and the service provider's name, address, and business telephone number through which additional information may be obtained or a complaint registered; (2) the service provider agrees to notify the consumer of any future rate changes; (3) the consumer agrees to use the service on the terms and conditions disclosed by the service provider; and (4) the service provider requires the use of an identification number or other means established by the service provider to prevent unauthorized access to the service by nonsubscribers. This definition should prevent circumvention of legitimate regulation while at the same time permitting mutually beneficial business arrangements between IPs and consumers.

12. The legislative history of the TDDRA provides evidence of congressional intent to leave credit or charge card transactions outside the scope of the TDDRA.[24] Thus, we have recognized in our presubscription definition that subscribers may establish a presubscription or comparable arrangement during the course of a call to an information services program by disclosing a credit or charge card number and authorizing charges to that number as long as the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending and Fair Credit Billing Acts.[25] However, no other actions taken

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24 S. Rep. No. 102-190 at 12, 102nd Cong., 1st Sess., 137 Cong. Rec. (daily ed. Oct. 16, 1991).

25 15 U.S.C. § 1601 et seq. We believe that this last requirement is crucial to effect the intent of Congress with respect to dispute resolution procedures for pay-per-call services. In specifying the required level of protection to be afforded to consumers disputing pay-per-call charges, Congress specifically identified the Truth in Lending and Fair Credit Billing Acts as the required models for the FTC to follow in meeting its obligations under Title III of the TDDRA. Thus, it is reasonable to conclude that Congress' willingness to exempt credit card transactions from the scope of the TDDRA was premised, at least in part, on an assumption that consumers engaging in such transactions would receive independent protection under the Truth in Lending and Fair Credit Billing Acts. A telephone company calling card subject to these Acts is, for the purposes herein, a credit card. We emphasize that in order for credit card transactions to quality for exemption from our pay-per-call rules, charges must actually be billed through the credit card. Presubscription agreements meeting the four criteria enunciated above also could be accomplished by use of calling cards.

during the course of a call for which information services charges are assessed can be construed as creating a presubscription or comparable arrangement.

13. Our definition does not require that presubscription agreements be executed in writing. Regardless of whether presubscription is accomplished in writing, an IP bears the burden of establishing the existence of a valid presubscription agreement as we have defined that term in the event of a dispute. This burden, along with the attendant risk that transmission will be terminated if it is determined that an IP is claiming an exemption from pay-per-call requirements on the basis of non-existent presubscription agreements, should effectively deter false presubscription claims.[26]

B. Limitations on the Provision of Pay-Per-Call Services (Section 64.1502)

14. Proposal. Under the TDDRA, any common carrier who assigns telephone numbers for pay-per-call purposes must require by contract or tariff that IPs utilizing such numbers comply with the provisions of the Titles II and III of TDDRA and any implementing regulations prescribed by the FTC.[27] Section 64.1502 of our proposed rules incorporated this broad statutory compliance mandate with our existing rule requiring common carriers to transmit pay-per-call programs under certain prescribed terms and conditions.[28]

15. Comments. Our proposal for a broad compliance mandate generated little discussion from commenters. NACAA suggests that Section 64.1502 and other rules pertaining to the relationship between common carriers and IPs be expanded to include relationships between carriers and service bureaus who lease lines from IXCs and, in turn, provide them to individual IPs.[29]

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26 See 47 U.S.C. § 228(c)(2); 47 C.F.R. § 64.1503 adopted herein. Moreover, the presubscription agreement must be with a person who is legally capable of entering into a contractual agreement.

27 47 U.S.C. § 228(c)(1). There apparently is some uncertainty as to the class of carriers subject to this requirement. BellSouth asks the Commission to specify that the statutory phrase "any common carrier assigning to a provider of pay-per-call services a telephone number" applies to IXCs, not LECs. Comments of BellSouth at 2. Other parties ask for clarification of similar language used in other rules. In drafting our proposed pay-per-call regulations, we employed statutory language to the maximum extent possible and we continue to do so in the rules adopted herein. Nonetheless, we clarify here that phrases "any common carrier assigning to a provider of [interstate] pay-per-call service a telephone number" and "any common carrier that by tariff or contract assigns a telephone number to a provider of [interstate] pay-per-call services" are meant to denote any IXC offering its facilities for transmission of an interstate pay-per-call program.

28 47 C.F.R. § 64.710.

29 Comments of NACAA at 3.

16. __Decision__. We believe that the language of this rule, and others covering the relationship between common carriers and IPs, encompasses all situations in which an IP is assigned a pay-per-call telephone number, regardless of whether that assignment is made directly by a common carrier or through a service bureau. Accordingly, we are adopting Section 64.1502 as proposed.

C. Termination of Pay-Per-Call Programs (Section 64.1503).

17. __Proposal__. Under the TDDRA, a common carrier that has assigned a telephone number to a pay-per-call program is compelled to "terminate" that program if the carrier knows or reasonably should know that the program is not being offered in compliance with Titles II and III of the TDDRA and related FTC regulations.[30] Section 64.1503 of our proposed rules provided for "prompt" termination after notice to the IP, and we inquired whether carriers should be afforded discretion to delineate termination procedures in their tariffs and contracts or whether explicit standards should be codified in our rules.

18. __Comments__. IPs, generally, express serious concerns about the manner in which termination will be accomplished, contending that the proposed rule does not adequately recognize or protect their due process rights. Several parties complain that assigning to carriers a responsibility to make judgments regarding lawfulness and to impose a penalty as severe as termination leaves survival of an IP's business ventures to the "whim of the carrier."[31] The Joint IPs argue that without certain minimal procedural protections to protect the interests of the IPs, any termination system administered by carriers will run afoul of the First and Fifth Amendments to the Constitution. Citing __Freedman v. Maryland__, 380 U.S. 51, 58 (1965), as support, they suggest that a series of procedural safeguards be adopted whereby (1) 72 hours written notice is required prior to termination, (2) an IP can obtain prompt judicial or third party review of any proposed termination, and (3) the carrier holds the burden of proof to show a violation of federal law. Without such provisions, the Joint IPs contend, termination is at risk of constituting an impermissible suppression of free speech and the taking of property without due process.[32]

19. Consumer groups and state law enforcement representatives assert that more expansive grounds for termination are necessary to protect consumers from fraudulent or abusive pay-per-call programs.[33] Both NAAG and NACAA assert that

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30 47 U.S.C. § 228(c)(2).

31 Comments of Joint IPs at 2-5; __See also__ Comments of Phone Programs at 6-7; Comments of AM at 10 (delegating termination decisions to carriers is especially problematic given "their own potentially conflicting economic incentives"); Comments of Tele-Publishing at 2-3.

32 Comments of Joint IPs at 3.

33 Comments of CA at 2; Comments of NAAG at 9-11; Comments of NACAA at 4.

violations of state regulations should be included as grounds for termination.[34] NACAA further suggests that carriers should be required to "immediately suspend service which appears to violate any applicable federal or state laws or regulations" pending an investigation to determine whether the service should be permanently terminated.

20. Carriers generally believe that termination can be fairly administered within the structure of the proposed rule. They endorse codification of general termination standards with specific procedures to be set by contract or tariff. The requirement for prompt termination is supported, with different carriers citing acceptable notice periods ranging from seven to up to 30 days.[35] Responding to IPs' objections to termination requirements, AT&T characterizes language employed by Congress as definitive and non-discretionary: "carriers shall terminate" pay-per-call programs when they know or reasonably should know such programs to be unlawful." The carriers seek affirmation of their view that any obligation to assess lawfulness of pay-per-call programs does not require them to "actively police" programs or undertake investigations in the absence of complaints or evidence of unlawfulness.[36]

21. **Decision**. We believe that our termination rule should establish a general framework for carriers to follow in setting their own more detailed procedures.[37] However, we have concluded that the interests of consumers, carriers, and IPs alike would be served by more specific requirements than those contained in the proposed termination rule. Accordingly, proposed Section 64.1503 has been redrafted to specify that carriers acting under that rule cannot terminate a pay-per-call program until at least seven and no more than 14 days after the IP has received written notice from a carrier citing the particular violation of law upon which a termination decision is based. An IP can avoid termination by responding with corrective action during the notice period. In addition, IPs believing that a termination decision is unwarranted can seek to enjoin a carrier from executing the decision. The notice period will ensure a

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34 NAAG notes that such a provision would merely ensure continuation of carriers' initiation of pay-per-call investigations upon request from state law enforcement authorities. Comments of NAAG at 10. But see Reply Comments of Sprint at 8.

35 See e.g., Comments of MCI at 3-4 (plans to adopt seven day notice period); Reply Comments of CBT at 4 (notice period should not exceed 30 days).

36 Comments of AT&T at 4-5; Comments of MCI at 5-6; Comments of Sprint at 7; Reply Comments of Ameritech at 1-2 (carrier "activism" is inconsistent with a carrier's role as nondiscriminatory service provider).

37 As a threshold matter, we specify that within the context of this rule, termination is not limited to a cessation of billing, but encompasses transmission of the pay-per-call program. See Comments of VRS at 3 (seeks clarification of term "terminate").

general level of consistency in termination procedures upon which IPs can rely without imposing unreasonable constraints on common carriers.[38]

22. We believe that termination standards or procedures advanced by some commenters are unreasonable or unwarranted. A requirement of suspension of service immediately upon an appearance of unlawfulness is overly broad and violates fundamental concepts of fairness. Extending the grounds for termination of interstate pay-per-call service to include violations of state law is unwarranted given the fact the TDDRA clearly designates violations of federal law and rules as the only basis for termination.

23. We affirm the view expressed by several carriers and IPs, alike, that the termination obligation does not require carriers to monitor pay-per-call programs or initiate investigations in the absence of a complaint. The statutory language requiring termination when a carrier "knows, or reasonably should know," of unlawful behavior supports this interpretation.[39] We also decline to specify a particular number of complaints upon which a carrier reasonably should know of illegal behavior, but emphasize here that carriers are expected to investigate each complaint of unlawfulness.

24. Given the provisions of our redrafted termination rule, we believe there is no basis for a constitutional challenge to a system under which carriers are charged with making decisions to terminate pay-per-call programs after affording IPs an opportunity to bring their programs into compliance. Nothing in the TDDRA or our pay-per-call regulations requires carriers to establish monitoring systems or take other actions that would constitute state-mandated prior restraint of pay-per-call programs. Pay-per-call programs are presumed to be lawful in the absence of evidence to the contrary. Violations of the requirements governing the provision of pay-per-call services contained in the TDDRA and this Commission's and the FTC's implementing regulations are the sole basis for a carrier's termination of a pay-per-call program under Section 64.1503.[40] Carriers' termination decisions may, of course, be brought before either this Commission, through the complaint process,[41] or a court of competent

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38 In fact, in setting the notice period, we gave particular consideration to carriers' suggestions regarding an appropriate time frame, although we believe that the 30-day period mentioned by one carrier leaves consumers vulnerable to services in violation of the TDDRA for too long.

39 We adopt this interpretation whenever the statutory phrase "knows or reasonably should know" is incorporated in our rules. See Section 64.1510(a)(1).

40 Thus, although carriers may independently terminate service for other reasons, they may not claim federal authority or assert Section 64.1503 as a basis for such actions.

41 Section 208 of the Communications Act establishes the right of any party to complain that the actions or inactions of a common carrier are in violation of the Communications Act or the Commission's rules or orders. 47 U.S.C. § 208. However, under the TDDRA, common carriers are

jurisdiction. The requirements of written notification and a waiting period of at least seven days prior to termination ensure that IPs' due process rights will be respected. No special procedures need be established to ensure speedy consideration of termination cases, since the minimum of seven days required between the time of notification and actual termination afford ample opportunity for an IP to seek injunctive relief, if appropriate.

25. Section 64.1503 properly balances the interests of IPs against the governmental interest in shielding consumers from deceptive and fraudulent pay-per-call services and charges associated with the provision of such services. In the TDDRA, Congress enacted various narrowly tailored provisions to promote that protective purpose. Maximum effectiveness of the consumer protections deemed necessary by Congress depend upon an expectation and assurance that programs not operating in compliance with such provisions will be terminated promptly. Delays in terminating such programs will expose consumers to charges from unlawful services. For this reason, we reject the suggestion of the IPs to impose a requirement that no pay-per-call service can be terminated without an independent finding of violation or corroboration of a carrier's determination because it would thwart the protective purpose underlying the TDDRA.[42] As explained above, we conclude that the due process rights of IPs will be adequately protected by the notice period.

D. Restrictions on the Use of 800 Numbers (Section 64.1504)

26. **Proposal**. The NPRM/NOI proposed a rule codifying the TDDRA's restrictions on the use of 800 numbers for pay-per-call purposes. Proposed Section 64.1504 employs the statutory language almost unchanged to prohibit the use of an 800 number in any manner that would result in (1) charges being incurred upon completion of a call; (2) connection of the caller to a pay-per-call service; (3) charges being incurred for any information conveyed during the call unless the caller either has a preexisting agreement authorizing such charges or discloses a credit or charge card number and authorizes the imposition of charges to that number during the call; or (4) the caller being called back collect to receive audio information service or simultaneous voice conversation services. Commenters were encouraged to discuss whether additional restrictions should be included to guard against deceptive practices. In addition, we specifically asked whether, for purposes of this section, telephone company calling cards should be recognized as credit or charge cards.

27. The NPRM/NOI also incorporated within this proceeding the record established in a pending rule making proceeding (RM-7990) initiated pursuant to a Petition for Modification and Clarification filed by NAAG on April 30, 1992. NAAG sought a determination which would (1) apply existing pay-per-call rules to information services offered through 800 numbers and (2) prohibit the use of

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specifically relieved from civil liability for termination decisions executed in good faith. 47 U.S.C. § 228(e)(2).

42 Termination of telephone service is permissible without a finding of violation by some neutral body. Occhino v Northwestern Bell Telephone Co., 675 F.2d at 220, 225-226 (8th Cir. 1982).

800 numbers for services that bill customers through use of tone-generation technology, automatic number identification (ANI), or billing detail information. The NPRM/NOI advised parties that comments filed in RM-7990 would be fully considered in this proceeding and encouraged discussion regarding the manner in which the TDDRA's prohibitions on the use of 800 numbers differed from NAAG's proposals.

28. Comments. Although many parties endorse the Commission's proposed codification of the TDDRA's 800 number limitations,[43] other parties contend that use of 800 numbers to initiate pay-per-call service should not be precluded when an IP employs proper protective measures to assure that customers have made an affirmative choice to receive service.[44] Citing Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989), the Joint IPs aver that an outright ban on the use of 800 numbers for pay-per-call services violates the First Amendment since it is not the least restrictive means of promoting legitimate government interests. Some parties suggest that consumer interests are fully protected in a less restrictive manner if price disclosures are made during an initial 800 call and affirmative action is required to first initiate, and then accept, a collect call made in response to a call to an 800 number.[45]

29. Despite some parties' concern with preserving collect call back arrangements prohibited by Section 64.1504(d), most commenters' interests in Section 64.1504 appear to be centered on subsection (c), which establishes an exemption from the general prohibition on the use of 800 numbers for pay-per-call purposes when a transaction is subject to a "preexisting agreement" between the caller and the IP or is executed through a credit or charge card. Some commenters are concerned that this provision could provide a loophole through which unscrupulous parties might evade the intent of Congress.[46] NAAG suggests that even when credit or charge cards are used to bill 800 number information charges, requirements for "preamble and price and advertising disclosures" should continue to exist. CA echoes NAAG's position in RM-7990 in urging prohibition on any use of ANI to bill calls to 800 numbers regardless of whether the transaction is charged to a credit or charge card or subject to a preexisting arrangement. Finally, NACAA would define the term "information" as "data services," so that the limited permission granted by the TDDRA to impose charges

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43 Comments of BellSouth at 2-3; Comments of CBT at 2; Comments of CPUC at 3; Comments of Pacific Bell at 8; Comments of Tn. PSC at 2.

44 Comments of Pilgrim at 7; Comments of Joint IPs at 5; See, e.g., Comments of Summit at 11. The Joint IPs also assert that "preexisting business relationships and agreements, possibly made during a pay-per-call conversation," established prior to the enactment of the TDDRA should be exempt from any 800 number prohibitions. They also seek an exemption for services billed privately rather than by common carrier. Comments of Joint IPs at 5.

45 Comments of Joint IPs at 5; Comments of Summit at 11-12.

46 Comments of NACAA at 5-6; Comments of NAAG at 17.

for information conveyed during a call to an 800 number would extend only to the restricted category of data services.

30. APCC urges the Commission to adopt a blanket prohibition against billing charges emanating from 800 number information services to an originating telephone line belonging to a payphone. APCC contends that such action is necessary because provisions designed to protect callers to 800 number information services leave independent payphone owners susceptible to the fraudulent behavior of callers using their equipment.

31. Decision. The TDDRA clearly and unambiguously prohibits the use of 800 numbers for certain pay-per-call purposes, and thus establishes as federal law many of the restrictions that NAAG sought in RM-7990. We believe that there are no constitutional impediments to these restrictions. The restrictions constitute a permissible limitation on the manner in which free speech rights may be exercised because they are content-neutral, leave other avenues of communication open to parties seeking to exercise First Amendment rights, and are narrowly tailored to serve a legitimate governmental interest.[47]

32. The restrictions governing the use of 800 numbers for pay-per-call purposes apply across the board irrespective of the content of individual pay-per-call messages. In addition, the restrictions do not prevent IPs from exercising First Amendment rights. As discussed more fully below, information services charged on a per-call basis may be made available over 800 numbers when they are charged to a credit or charge card or provided under a presubscription arrangement. In addition, 900 numbers are freely available for pay-per-call services. Limitations on the use of 800 numbers simply recognize significant consumer confusion and dissatisfaction with such usage and advance the significant governmental interest in shielding consumers from deceptive practices associated with a service that is widely perceived as free to the calling party.

33. Arguments that the affirmative responses necessary to accept a collect call adequately serve the governmental interest in protecting consumers from abuse and deceit are unavailing. Complaints received by this Commission indicate that there is a substantial level of consumer confusion with 800 number information programs. In addition, the important protective tool afforded by pay-per-call blocking options is not completely practical for collect and other calls involving 800 numbers. While collect calls can, to some extent, be blocked, a subscriber wishing to ensure that collect information services calls cannot be received would also have to accept that no other collect calls can be received. We do not believe this is a reasonable choice for most subscribers. Given these practical difficulties of effectively insulating subscribers from unauthorized charges for information services offered via 800 numbers, the limited ban on that means of transmission is narrowly drawn to advance the government's interests in consumer protection.

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47 See Ward v. Rock Against Racism, 491 U.S. 781 (1989); Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984); Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981).

34. Although use of 800 numbers to provide pay-per-call services is severely constrained by the TDDRA, an exemption is created for information[48] services offered under a preexisting agreement or through credit or charge card transactions. NAIS suggests, and we agree, that the term "preexisting agreement" should be synonymous with "presubscription or comparable arrangement."[49] The same considerations that guided development of the definition of presubscription are at issue here. Accordingly, Section 64.1604(c) permits callers who have established presubscription or comparable arrangements to be charged for information conveyed during a call to 800 numbers.[50] We decline to require a preamble for 800 number information services charged to a credit or charge card. As noted in paragraph 12, the legislative history of the TDDRA indicates that Congress did not intend to subject credit or charge card transactions to the requirements of the TDDRA. We believe that a customer choosing to authorize charges for any service or product to a credit or charge card reasonably can be presumed to know what charges are being incurred and to have made an affirmative decision to accept those charges. Moreover, in the event of a dispute, a consumer using a charge or credit card has available the full panoply of protections accorded by the Truth in Lending Act and Fair Credit Billing Act.[51]

35. We decline to adopt APCC's suggested ban on billing charges for 800 number information services to payphones. However, we are adopting APCC's suggestion and modifying Section 64.1504(a) to prohibit "the calling party <u>or the subscriber to the originating line</u> being assessed, by virtue of completing the call, a charge for the [800 number] call." This provision, along with the TDDRA's blanket prohibitions against 800 number collect call back systems and transfer of 800 number calls to pay-per-call services, should serve as adequate protection for payphone owners.

E. Restrictions on Collect Telephone Calls (Section 64.1505)

36. <u>**Proposal**</u>. The <u>NPRM/NOI</u> proposed to continue, with minor modification, the requirement in Section 64.715 of the existing rules that affirmative action

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48 There is no evidence to support the view expressed by NACAA that within the context of this exemption, the term "information" should be so narrowly defined as to encompass only data services.

49 Comments of NAIS at 6.

50 Given the explicit standards governing establishment of presubscription arrangements and the protections afforded to credit or charge card users, we see no need to prohibit the use of ANI for billing purposes at this time in the context of this rule.

51 These protections are critical if particular means of purchasing information services are to be exempt from our pay-per-call rules. Accordingly, exemption is available only if the call is actually charged to a credit card and billed to the subscriber separately from telephone charges or if a credit card is used in conjunction with a presubscription agreement meeting the four criteria set forth in § 64.1501(b)(1)(i)-(iv). <u>See</u> n.25, <u>supra</u>.

clearly indicating a called party's acceptance of permissible collect charges is a prerequisite to the transmission of collect interstate information services.

37. Comments. APCC suggests that this rule be amended to provide that "[i]in the case of public payphones, no common carrier shall provide transmission services billed to a payphone line on a collect basis, whether or not the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service."[52] MCI counters that such a prohibition is unnecessary in light of the availability of LEC screening services to prevent collect billing to payphones.[53] The Joint IPs, while not questioning the basic requirement of the rule, ask the Commission to confirm that a called party's action in dialing a number or depressing a key pad in response to an instruction constitutes the required affirmative act.[54]

38. Decision. Before considering the specifics of the proposed rule, we discuss certain threshold issues regarding collect information service calls more generally. In the NPRM/NOI, we recognized that certain collect information service calls would not fall within the pay-per-call rules if they were charged at a tariffed rate.[55] While tariffed services are explicitly removed from the scope of the TDDRA's regulatory scheme, we recognized that collect information services present the potential for serious abuse even if charges for such services are tariffed and we proposed a regulatory scheme for such allowable collect calls. Moreover, we described the abuses associated with untariffed collect calls and stated that collect calls in general had resulted in numerous complaints to both the Commission and state regulatory commissions.[56]

39. In response to numerous comments suggesting that all collect information services be prohibited,[57] we have reexamined the TDDRA to discern the proper regulatory treatment of these services. The TDDRA explicitly addresses collect calling patterns only with respect to the use of calls to 800 numbers to initiate a return collect call; it is the use of the 800 number in this way, not the transmission of a collect call, that is prohibited.

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52 Comments of APCC at 9.

53 Reply Comments of MCI at 7-8.

54 Comments of Joint IPs at 7.

55 8 FCC Rcd at 2334.

56 Id. at n. 15.

57 Several commenters urge the Commission to expressly prohibit collect information service calls, contending that an outright ban is necessary to protect subscribers from the deceptive practices of some IPs. Comments of CA at 4; Comments of NACAA at 7; Comments of BellSouth at 4; Comments of NYNEX at 2; Comments of Phone Programs at 10-11; Comments of SCTC at 3; Reply Comments of CBT at 1-2; Reply Comments of GTE at 4-5; Reply Comments of NTCA at 3-4. But see Comments of 900 America at 2; Comments of AM at 2.

Nevertheless, Section 228(b)(5) requires that any service specified in Sections (i)(1)(A)-(B) be offered only through the use of specified "area codes or prefixes."[58] The specified services include audio information or audio entertainment services and various other calls "for which the caller pays a per-call or per-time interval charge that is greater than, or in addition to, the charge for transmission of the call . . . ." 47 U.S.C. § 228(i)(1)(A)-(B). We believe that, in the context of a collect call, once the recipient accepts the call he or she becomes the "caller" for purposes of Section 228.[59] Accordingly, such a collect call would be inconsistent with the statutory requirement that audio information, audio entertainment and other calls identified in Sections 228(i)(1)(A)-(B) be provided through a specified area code or prefix if the charges exceed the transmission charge, and are thus prohibited.[60] We believe that this prohibition should be explicitly reflected in our pay-per-call regulations. Section 64.1505, thus, specifies that common carriers cannot transmit or bill for interstate collect calls offering services meeting the basic pay-per-call criteria set forth in Section 64.1501(a)(1)-(2).

40. Turning to the specifics of our proposed rule, collect information services billed at a tariffed rate would be permissible under the regulatory system established by the TDDRA since tariffed services are explicitly exempted from the statutory requirements.[61] Although it is unclear to what extent IPs will seek to use tariffed services to provide information services on a collect basis[62], it is important to continue our requirement that charges will not be

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58 We proposed in the NPRM/NOI that such services provided on an interstate basis be offered exclusively on telephone numbers beginning with the 900 service access code. 8 FCC Rcd 2333-34.

59 This is consistent with the approach we previously took on this issue. See 900 Services Order, 6 FCC Rcd at 6179 ("When a consumer takes affirmative action clearly indicating that it accepts such charges for a collect call, the consumer's action changes him or her from the called party to the calling party for the purposes of this rule.") There is no indication in the legislative history that Congress intended to alter this approach.

60 We also believe that it would be an unjust and unreasonable practice under Section 201(b) of the Communications Act for a common carrier to permit an IP to avoid the TDDRA regulatory regime by using untariffed collect calls in this manner. This provides an independent basis for our prohibition.

61 47 U.S.C. § 228(i)(2).

62 Any carrier offering collect service on an interstate basis must set forth the rates and regulations for such service in a tariff filed with this Commission. No carrier may attempt to avoid this requirement by entering into contractual agreements with IPs, rather than filing tariffs, or by offering incentives to an IP to use its collect services. We also note that an IXC who is also an IP may not tariff the charge for the information service, as this would violate the prohibition against an IXC tariffing

incurred unless a called party takes affirmative action indicating acceptance of the collect charges, and to take other actions to ensure that abuses associated with allowable collect calls are minimized.[63] Thus, we are adopting the proposed provision requiring affirmative action with certain modifications.

41. We are enlarging the types of collect calls covered by this rule. The proposed rule described as within its scope, "audio information services or simultaneous voice conversation services" billed to a caller on a collect basis. In the rule adopted herein, we use the term tariffed collect information services to encompass collect calls, charged at a tariffed rate, for "audio or data information services, simultaneous voice conversation services, or products." This expansion simply reflects the full range of services apparently covered by the statutory definition of pay-per-call.

42. We clarify here that a subscriber's action in dialing a number or depressing a key in response to an instruction constitutes an affirmative action for purposes of this section. Finally, we agree with MCI that the APCC's proposal to expand the limitations encompassed by the proposed rule is unnecessary. The Commission has mandated the provision of line number screening services at reasonable rates for the express purpose of enhancing the ability of payphone owners to protect themselves against fraud.[64] In light of the availability of such services to private payphone owners we believe it is unwarranted to impose upon common carriers a new obligation.

F. Number Designation (Section 64.1506)

43. Proposal. The NPRM/NOI proposed that all assignments for interstate pay-per-call programs be limited to telephone numbers beginning with a 900 service access code. We tentatively concluded that consumers' interests would be served by requiring that all interstate pay-per-call services be assigned to one easily recognizable service access code. Furthermore, we found that any initial costs or inconveniences experienced "would be outweighed by the public interest benefit of maximizing the ability of telephone subscribers to easily recognize the nature, and attendant pricing structure, of services being used."[65] We also invited parties to comment on whether public interest concerns support

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its enhanced services.

63 See ¶¶ 49-54 and 69-74, infra. We have received complaints alleging that collect calls are being received by subscribers on an unsolicited basis by the use of autodialers, usually offering adult services, and that charges for such services are being assessed even when no affirmative action has been taken.

64 Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Order on Further Reconsideration and Further Notice of Proposed Rulemaking, 8 FCC Rcd 2863 (1993).

65 NPRM/NOI, 8 FCC Rcd at 2334.

a requirement that intrastate pay-per-call programs be assigned to certain designated central office codes for different types of pay-per-call programs.[66]

44. **Comments**. The majority of comments support consolidation of all interstate pay-per-call services on the 900 service access code.[67] Many commenters agree that such consolidation would eliminate consumer confusion, reduce telephone subscriber complaints about pay-per-call services, and generally improve customer satisfaction with their telephone service.[68] Parties opposing the proposal, generally IPs and one LEC, argue that a service access code is a finite resource and that to limit all interstate pay-per-call to one service access code may impede the development of new innovative services.[69] In addition, opponents claim that the proposal will increase costs to IPs, effectively discouraging the introduction of new program services.[70]

45. An overwhelming majority of parties oppose any requirement that all intrastate pay-per-call programs be assigned to certain designated office codes.[71] Generally, the parties argue that such a system is not technically feasible at this time and, in any event, would be costly and disruptive.

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66 Id. In addition, parties were asked to discuss whether an office code designation system could be accommodated on 900 numbers without undue disruption. Id., n.13.

67 See Comments of AT&T at 6 ("strongly endorses"); Comments of Bell Atlantic at 1-2); Comments of BellSouth at 3; Comments of CA at 2-4; Comments of GTE at 3 (would avoid consumer confusion and dissatisfaction); Comments of NAAG at 4; Comments of NYDPS at 1-2; Comments of NYNEX at 2, n.2; Comments of Pacific Bell at 3; Comments of SCTC at 2; Comments of SWBT at 4-5; Comments of Sprint at 7-11; Reply Comments of VRS at 4.

68 See, e.g., Comments of AT&T at 6 use of the 700 service access code by IPs creates confusion for interstate subscribers); Comments of CA at 3; Comments of GTE at 3; Comments of NACAA at 7; Comments of Sprint at 8.

69 See Comments of IIA at 13; Comments of NAIS at 14-16; Comments of Tele-Publishing at 3 (proposal would hinder the development of technologies such as "N11" and "N00" and other abbreviated dialing services and various POTS information applications under consideration for banking and other industries); Comments of U S WEST at 12.

70 See Comments of IIA at 13; Comments of Pilgrim at 5-7 (costs of 900 services are "unjustifiably higher than similarly provisioned and accessible 800 service"; high costs have an anticompetitive effect on smaller IXCs); Comments of USTA at 3.

71 See, e.g., Comments of Ameritech at 2; Comments of AT&T at 7; Comments of CA at 3; Reply Comments of DMA at 11; Comments of NYDPS at 2; Comments of Pacific Bell at 3; Comments of Phone Programs at 5; Comments of SWBT at 5; Comments of Sprint at 9; Reply Comments of USTA at 8 (USTA supports AT&T's argument that absent adoption of a costly 900 database, the same NXX code cannot also be used to identify a specific program category).

Furthermore, some parties argue that a detailed number designation system is unnecessary and not supported by consumer demand.[72] NAAG favors detailed designation, arguing that it would increase protections to consumers by enhancing the availability and effectiveness of system-wide or service-specific blocking.[73]

46. Comments on the Commission's inquiry regarding the proposed restriction of intrastate pay-per-call services to a limited number of central office codes or restricting intrastate pay-per-call services to those office codes already in service for those purposes were split. Parties supporting the proposal argue that intrastate pay-per-call services should be offered through either the 976 office code or the 900 service access code.[74] These parties claim that consolidation to one service access code or central office code will simplify blocking.[75] Moreover, USTA contends that consolidation would have consumer benefits.[76] Opponents argue that the Commission should not preempt state regulation of intrastate pay-per-call services.[77] Some parties believe that consolidation could cause technical difficulties and service disruptions.[78] NTCA contends that there is no record to support the assumption that consumers will benefit from the assignment of intrastate pay-per-call services to a limited number of central office codes.[79]

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72 See, e.g., Comments of Phone Programs at 5.

73 Comments of NAAG at 5.

74 See Comments of GTE at 4, n.3 (either 976 office code or the 900 service access code); Comments of NAAG at 4 (all pay-per-call services should be offered through the 900 service access code); Comments of NACAA at 7 (all pay-per-call should be assigned to the 900 code); Comments of Sprint at 9 (intraLATA pay-per-call should be offered through the 976 office code).

75 See, e.g., Comments of NAAG at 5-6.

76 Comments of USTA at 6.

77 See Reply Comments of BellSouth at 4; Comments of Cox at 3-4, 6; Reply Comments of Cox at 2 (designation to 976 or 900 codes is inappropriate and inconsistent with the Commission's desire to implement the requirements of the TDDRA with minimal disruption to carriers and providers); Comments of NYDPS at 2 (states are best able to decide intrastate numbering issues; New York already has a number designation system in place); Comments of SWBT at 5.

78 Comments of Bell Atlantic at 2-3; Comments of USTA at 3. See Reply Comments of Joint IPs at 4 (there are "technological impediments" to requiring the assignment of intrastate pay-per-call to the 900 service access code).

79 Reply Comments of NTCA at 3.

47. Decision. We are adopting the NPRM/NOI proposal to require that all interstate pay-per-call services be assigned to the 900 service access code.[80] The comments clearly support the proposal and the majority of the parties agree that any initial costs of relocation of numbers to the 900 service access code will be significantly outweighed by the increased ability of consumer's to recognize particular numbers as belonging to pay-per-call services and, thus, carrying charges beyond normal telephone rates. Furthermore, we are persuaded that consolidation of interstate pay-per-call to one service access code will reduce subscriber confusion and reduce telephone subscriber complaints. Opponents' claims that the 900 service access code will be exhausted in the near future are unfounded. As of December 31, 1992, more than half of the usable 900 codes were unassigned and not in use.[81] Moreover, the contention that assignment of interstate pay-per-call services to the 900 code would result in an increase of costs to information providers is not persuasive.[82] Because of the abundance of 900-NXX codes available for use by carriers, costs involved with application or relocation should remain constant. Finally, the argument that designation of interstate pay-per-call services to the 900 service access code will impede the development of new technologies such as N11 and N00 and other abbreviated dialing access services is not compelling because the services mentioned as being threatened by the consolidation of interstate pay-per-call are local exchange information services, not interstate services.[83]

48. We are limiting our number designation requirements to interstate pay-per-call services. The commenters have convinced us that the technical difficulties and potential disruption to the pay-per-call industry likely to accompany any federal requirements for numbering of intrastate pay-per-call services outweigh any benefit that a detailed number designation system would offer to consumers.[84] Currently, we estimate that local pay-per-call services are available through telephone numbers using between 15 and 20 different central

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80 We are changing the language of our proposed rule to conform with 47 U.S.C. § 228(b)(5).

81 Carrier & Code Assignments for 800, 900 & CIC Codes, Common Carrier Bureau, Industry Analysis Division, Feb. 1993 at 14. There are 792 "usable" NXX codes for 900 pay-per-call services. Id. Of the 792, only 297 were assigned to domestic IXCs as of December 31, 1992. Id.

82 Concerns about the level of the interstate transmission charges paid by IPs are more appropriately addressed in a tariff or complaint proceeding.

83 If the technology develops to the point where abbreviated dialing sequences are feasible for interstate use, we could reassess our current determination that all interstate pay-per-call services should be restricted to the 900 access code.

84 The value of such a system is predicated largely upon the availability of selective blocking options. There is no evidence before us indicating appreciable consumer interest in such options. See n.105, ¶ 63, infra.

office codes.[85] Several commenters claim that a requirement to assign intrastate pay-per-call programs to certain designated office codes may result in heavy costs to the carriers and information providers and may cause disruptions in service. States are taking an active rôle in regulating intrastate pay-per-call services, and, at this time, we decline to impose a requirement that intrastate pay-per-call programs be assigned to certain designated office codes or that services be limited to certain office codes.

G. Prohibition on Disconnection or Interruption of Service for Failure to Remit Pay-Per-Call or Similar Service Charges (Section 64.1507)

49. Proposal. The NPRM/NOI proposed to employ the precise language contained in the TDDRA to continue our existing prohibition on disconnection of basic communications service for failure to pay interstate pay-per-call charges. We indicated that inclusion of the statutory term "interrupt" would clarify that basic telephone services cannot be disrupted in any manner, including any action short of final disconnection.

50. Although not mandated by the TDDRA, we also proposed to extend the prohibition against any service disruptions to include any such action taken because of failure to pay charges for collect information services. In making this proposal we noted that consumers have complained to both this Commission and state commissions about such collect calls. We noted that although collect information calls do not fall within the TDDRA's definition of pay-per-call if the charges are tariffed, the calls actually resemble pay-per-call services more than they resemble traditional collect calls.

51. Comments. Several parties endorse the proposed changes in terminology in the disconnection prohibition transferred from Section 64.714 to Section 64.1507.[86] No one, however, suggests that the new language will require any change in carriers' existing disconnection practices with respect to their subscribers' failure to pay pay-per-call charges. In fact, at least one carrier specifically notes that it already interprets the term disconnection in its broadest sense.[87] NAAG, nonetheless, suggests further limitations on carrier behavior; in addition to prohibiting interruption or disconnection of local or long distance service for failure to pay pay-per-call charges, it would prohibit common carriers from "represent[ing] or imply[ing]" that such disconnection will be executed.[88]

52. Our proposal to expand the prohibition to include situations where a subscriber fails to pay charges for collect information services drew sharp

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85 NPRM/NOI, 8 FCC Rcd at 2333.

86 Comments of AT&T at 7-8; Comments of NACAA at 8; Comments of Pacific Bell at 4.

87 Comments of BellSouth at 3-4.

88 Comments of NAAG at 13.

opposition from parties.[89] LECs uniformly report that they are unable to distinguish collect information calls from ordinary collect calls[90] in the absence of either a subscriber's complaint[91] or distinguishing information from the IXC or IP.[92] Some parties suggest that such calls can, in fact, be identified when charges are billed above the tariffed rate for collect transmission.[93] Nonetheless, drawing a distinction between "tariffed charges for the underlying collect call" and "non-regulated sponsor charges," AT&T asserts that any disconnection prohibition should apply only to charges beyond the tariffed transmission rate, since carriers cannot reasonably be expected to ascertain the purpose of a call when they receive the called party's acceptance of collect charges.[94]

53. __Decision__. We are adopting the basic disconnection prohibition as proposed[95] but modifying its scope to address the concerns expressed with respect to the difficulty of distinguishing one type of collect call from another. The comments reflect a consensus that carriers cannot absolutely guarantee that

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89 Comments of AT&T at 8; Comments of Bell Atlantic at 3-4; Comments of BellSouth at 4; Comments of CBT at 2; Comments of SNET at 3; Comments of MCI at 4; Comments of Pacific Bell at 4; Comments of Sprint at 12; Comments of USTA at 8; Reply Comments of GTE at 5.

90 Comments of Bell Atlantic at 3-4, Comments of BellSouth at 4, Comments of CBT at 2, Comments of Pacific Bell at 4; Comments of SNET at 3; Comments of USTA at 8; Reply Comments of GTE at 5 (when customer disputes collect information services charges, GTE applies pay-per-call provisions).

91 Comments of SNET at 3-4 (currently, when a subscriber challenges collect audiotext charges, they are removed from the bill and referred back to the originating IXC.)

92 Comments of BellSouth at 4; Comments of U S West at 23.

93 Comments of CA at 4 (screening system would identify calls with charges exceeding "certain per-minute or per-call limits"), __See also__ Comments of AT&T at 8 (appears to concede that identification is possible in making distinction between tariffed transmission charges and additional IP charges).

94 Comments of AT&T at 7-8. This issue appears to be moot in view of our decision in ¶ 39, __supra__.

95 We are, thus, rejecting NAAG's recommendation that carriers be prohibited not only from actually interrupting or disconnecting basic communications services for failure to pay pay-per-call charges, but also from "represent[ing] or imply[ing]" that such interruption or disconnection might be executed. There is no evidence before us to suggest that carriers have conveyed such false information to subscribers, either deliberately or inadvertently. We are also requiring that subscribers who are billed for pay-per-call services be informed that basic telephone service cannot be disconnected for failure to pay pay-per-call charges. See ¶ 71, __infra__.

failure to pay charges associated with collect information services will not result in disconnection since there is no clear means by which all tariffed collect information services calls can be differentiated from ordinary collect calls. Nonetheless, we remain concerned that such services present the potential for serious abuse even if charges above the normal transmission rate are prohibited.[96] Consequently, Section 64.1507 has been revised so that failure to pay collect information service charges cannot result in disconnection of local or long distance telephone services when such charges have been disputed. This condition relieves carriers from an affirmative obligation to identify all collect information service calls but provides protection from disconnection to subscribers who challenge charges associated with such services.

54. We are also including within the scope of the disconnection prohibition, charges for information services provided under a presubscription or comparable arrangement. Under the TDDRA, provision of information services in such a manner removes transactions from the statutory definition of pay-per-call and the reach of the statute's protective provisions. We believe that the disconnection prohibition represents a primary yet minimally intrusive protection which should be applied to all programs having the basic attributes of pay-per-call service set forth in Section 228(i)(1)(A)-(B).

H. Blocking Access to 900 Service (Section 64.1508)

55. Proposal. Like our existing rules, the TDDRA requires that, where technically feasible, LECs must offer subscribers the option of blocking access to pay-per-call services. However, the TDDRA requires that blocking be made available on a somewhat different basis than under current regulations. Thus, the NPRM/NOI proposed to change current blocking options to comport with the TDDRA. Proposed Section 64.1508 would require LECs to offer blocking of pay-per-call services without charge to all subscribers for 60 days after the issuance of these regulations, and to all subscribers taking service at a new telephone number for 60 days after the new number is effective. Consistent with the statute, the proposed rule requires that additional blocks, or those executed outside the 60 day time frame, be offered for a "reasonable" charge.

56. The TDDRA requires the Commission to determine whether it is technically or economically feasible to require LECs to implement selective blocking, whereby subscribers would be afforded the option of presubscribing to or blocking only specific pay-per-call services. We asked commenters to identify any technological advances that might have occurred since adoption of our 900 Services Order in which we concluded that selective blocking was neither technically nor economically feasible. Finally, we invited comment as to whether LECs should be required to file federal tariffs for their 900 blocking services.

96 In fact, as noted in the NPRM/NOI, the Commission has received, and continues to receive complaints from consumers regarding unsolicited collect information service calls. Although our decision herein may deter this type of call, we recognize that IPs may continue to use IXCs' tariffed collect services and the potential for abuse continues, especially if the IP and IXC are commonly owned.

57. Comments. While commenters generally do not challenge the blocking system mandated by the TDDRA,[97] states and consumer interest organizations urge the Commission to defer to states having additional or complementary blocking requirements.[98] Other parties counter that such action would permit states to impose restrictions on interstate services and effectively thwart the national blocking standards that Congress established for interstate pay-per-call services.[99]

58. There is widespread agreement that selective blocking is neither technically nor economically feasible at this time.[100] Carriers agree that there are two possible means of accomplishing selective blocking, but that neither is feasible on a widespread basis, either now or in the near future. First, LECs could use line class codes (LCCs) to achieve selective blocking by assigning every 900 number subject to blocking a distinctive LCC. Some carriers assert that devoting switch capacity to such use could limit their ability to offer other services requiring LCCs.[101] Even assuming that such use of switch capacity were to be deemed desirable, carriers report that current switches are incapable of full ten digit screening, necessary to identify a particular pay-per-call service.[102] Second, carriers agree that advanced intelligent network (AIN) technology represents an alternative through which selective blocking could be made available, but that such capabilities will not be widely available for some

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97 But see Comments of NACAA at 8 (pay-per-call services should be blocked by default, with subscribers required to affirmatively seek access); Comments of SCTC at 4-7 (protective purposes of TDDRA support allowance of default blocking); Comments of Bell Atlantic at 5 (LECs who have, in the past, offered free blocking to subscribers should be relieved from offering blocking at no charge during the TDDRA's 60 day window following effectuation of our rules); Comments of Joint IPs at 7 (commercial subscribers should have to pay for blocking).

98 Comments of CA at 5; Comments of NAAG at 15-16; Comments of NARUC at 6-7; Comments of CPUC at 1-2; Comments of NYDPS at 2-4 (notes its own more generous blocking requirements and availability of some selective blocking options).

99 Reply Comments of DMA at 2-6. See also Comments of Tele-Publishing at 4; Reply Comments of MCI at 3; Reply Comments of NAIS at 2-4.

100 But see Reply Comments of VRS at 6-7 (IXCs and IPs are capable of providing specific number blocking and should be required to do so at no charge upon written request).

101 Comments of BellSouth at 4-5; Comments of SNET at 4-5.

102 Comments of CBT at 3-4; Comments of SWBT at 3; Comments of U S West at 21. See also Comments of SNET at 4-5; Comments of USTA at 4 (in many cases, switch modifications and replacement necessary to accomplish selective blocking through LCCs); Reply Comments of GTE at 3 (costly upgrades necessary to implement selective blocking).